



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-5171



Alan Karahalidis
Michael L. Kessel
5 Rawding Road
Peabody, MA 01960

Re: South Bay Resort
Tilton, NH
EPA # 2357070

**ADMINISTRATIVE ORDER
No. WD 02-33**

October 11, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division, to Alan Karahalidis and Michael L. Kessel pursuant to RSA 485:4 and RSA 485:58. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Alan Karahalidis and Michael L. Kessel are individuals having a mailing address of 5 Rawding Road, Peabody, MA 01960.

C. STATEMENTS OF FACTS AND LAW

1. RSA 485 authorizes DES to regulate public water supplies. RSA 485:3 authorizes DES to adopt drinking water rules which identify contaminants which may have an adverse effect on health, which establish maximum contaminant levels that are acceptable for human consumption, which establish criteria and procedures to assure compliance with such maximum contaminant levels, and which identify criteria and standards to ensure the proper operation and maintenance of water systems. Pursuant to this authority, DES has adopted NH Admin. Rules Env-Ws 300 *et. seq.*
2. Alan Karahalidis and Michael L. Kessel are the owners of South Bay Resort water system which serves approximately 10 cottages, 15 trailer sites, and one main building located in the community of Tilton, NH ("Water System"). The Water System is a transient, non-community water system as defined in RSA 485:1-a, X and Env-Ws 302.02 (ca).

I. Bacteria Monitoring

3. Env-Ws 315.01 requires all transient, non-community water systems to monitor for bacteria in accordance with a schedule based on the population served by the system.

4. Former Env-Ws 325.02, now codified as Env-Ws 325.05, requires transient, non-community water systems serving fewer than 1,000 people to submit a minimum of one sample during each quarter the water system is open to the public.
5. The Water System is required to routinely collect one water sample during the system's scheduled months of April and July.
6. On June 15, 2001, a Letter of Deficiency ("LOD") was issued to the Water System for failing to collect samples for bacterial analysis during the system's scheduled sampling months of April 2000 and April 2001. The LOD requested that the Water System:
 - a. By July 13, 2001, submit a sample for bacterial analysis; and
 - b. Submit a routine sample for bacterial analysis in the system's scheduled sampling months of April and July.
7. The LOD was sent to the Water System via certified mail return receipt requested but was returned to DES marked "unclaimed" on July 5, 2001. On July 6, 2001, the LOD was reissued to the Water System via regular mail. No response to the LOD was received by DES.
8. The Water System failed to submit a routine sample for bacterial analysis in the system's scheduled sampling months of July 2001, April 2002, and July 2002.

II. Nitrate Monitoring

9. Env-Ws 326.30 requires all transient, non-community water systems to monitor for nitrate on an annual basis.
10. The Water System failed to submit a nitrate sample for the 2000 and 2001 compliance periods.
11. Env-Ws 321.09 requires all public water systems to monitor at the time designated by DES within each compliance period. The Water System was designated to sample for nitrate during the second quarter of 2002.
12. The Water System failed to submit a nitrate sample during the second quarter of 2002, and to date, has not submitted a nitrate sample for 2002.

III. Nitrite Monitoring

13. Env-Ws 326.35 requires all transient, non-community water systems to monitor for nitrite per compliance period.
14. Env-Ws 302.02(k) defines "compliance period" as a three-year calendar period.
15. Env-Ws 321.09 requires all public water systems to monitor at the time designated by DES within each compliance period. The Water System was designated to sample for nitrite during the second quarter of 2002 for the 2000 - 2002 compliance period.

16. The Water System failed to submit a nitrite sample during the second quarter of 2002, and to date, has not submitted a nitrite sample during the 2000 - 2002 compliance period.

IV. Public Notice

17. Prior to January 1, 2002, Env-Ws 351.01 required a water system that failed to submit any of the routine bacteria or chemical monitoring samples required by Env-Ws 321 through Env-Ws 329 to notify persons served by the system within 21 days of the failure to sample. Within 30 days of the failure to sample, the water system was required to provide proof of public notice to DES.

18. As of January 1, 2002, Env-Ws 351.01 requires a water system that fails to submit any of the routine bacteria or chemical monitoring samples required by Env-Ws 321 through Env-Ws 329 to notify persons served by the system within 30 days of the failure to sample. Within 10 days of providing public notice, the water system must provide proof of public notice to the DES.

19. The Water System failed to submit proof of public notice to DES for the April 2001, July 2001 April 2002, and July 2002 bacteria sampling violations.

20. The Water System failed to submit proof of public notice to DES for the failure to submit a nitrate sample in 2000, 2001, and the second quarter of 2002.

21. The Water System failed to submit proof of public notice to DES for the failure to submit a nitrite sample in the second quarter of 2002 for the 2000 - 2002 compliance period.

V. Sanitary Survey

22. Env-Ws 306.01(b) requires that each transient, non-community water system be subject to a sanitary survey at least once every five years. The purpose of the sanitary survey is to conduct an on-site review in order to evaluate the adequacy of the sources, storage facilities, equipment, operation, and maintenance to produce and distribute safe drinking water.

23. Env-Ws 306.01(e) requires that significant operation or facility deficiencies be corrected within 90 days of the date of the sanitary survey.

24. On June 24, 1998, a sanitary survey was performed at the Water System. The June 24, 1998 survey report noted the following significant deficiencies:

a. The atmospheric storage vent on the well potentially allows the entry of contaminants into the well. The opening should face downward and be covered by a secure screen to exclude insects or small animals; and

b. New Hampshire design standards require that all sources be capable of being sampled individually. Only in this way is it possible to monitor the water supply completely and to isolate pollution sources when necessary. A sampling tap for each source must be installed. The source sampling tap should be located on each well waterline prior to its entry to the first on-line storage tank. They should be located at least 12 inches above the pumphouse floor.

25. The June 24, 1998 sanitary survey required the Water System to correct the significant deficiencies within 90 days of the date of the inspection and notify DES in writing when the deficiencies have been corrected.
26. DES has no record of the requested written response to the significant deficiencies noted in the June 24, 1998 sanitary survey report.

D. DETERMINATION OF VIOLATIONS

1. The Water System has violated Env-Ws 325.05 by failing to submit water samples for bacterial analysis in April 2000, April 2001, July 2001, April 2002, and July 2002.
2. The Water System has violated Env-Ws 351.01 by failing to provide proof of public notice to DES for the failure to sample for total coliform bacteria in April 2001, July 2001, April 2002, and July 2002.
3. The Water System has violated Env-Ws 326.30 by failing to submit a water sample for nitrate analysis in 2000, 2001, and the second quarter of 2002.
4. The Water System has violated Env-Ws 351.01 by failing to provide proof of public notice to DES within 30 days of the failure to sample for nitrate in 2000, 2001, and the second quarter of 2002.
5. The Water System has violated Env-Ws 326.35 by failing to submit a water sample for nitrite analysis in the second quarter of 2002 for the 2000 - 2002 compliance period.
6. The Water System has violated Env-Ws 351.01 by failing to provide proof of public notice to DES within 30 days of the failure to monitor for nitrite in the second quarter of 2002.
7. The Water System has violated Env-Ws 306 by failing to correct the significant deficiencies as noted in the Sanitary Survey report of June 24, 1998.

E. ORDER

Based on the above findings, DES hereby orders Alan Karahalidis and Michael L. Kessel as follows

1. Within 10 days of the date of this Order, submit a total coliform sample to the state laboratory or a state-certified laboratory. Within 2 days of completion, submit total coliform results to DES.
2. Within 15 days of the date of this Order, notify water consumers of the failure to sample for total coliform bacteria in April 2001, July 2001, April 2002, and July 2002.
3. Within 25 days of the date of this Order, submit proof of public notice required above to DES
4. Within 10 days of the date of this Order, submit a nitrate sample to the state laboratory or a state-certified laboratory. Within 2 days of completion, submit the nitrate results to DES.

5. **Within 15 days of the date of this Order**, notify water consumers of the failure to sample for nitrate in 2000, 2001, and the second quarter of 2002.
6. **Within 25 days of the date of this Order**, submit proof of public notice to DES for the failure to sample for nitrate in 2000, 2001, and the second quarter of 2002.
7. **Within 10 days of the date of this Order**, submit a nitrite sample to the state laboratory or a state-certified laboratory. Within 2 days of completion, submit the nitrite results to DES.
8. **Within 15 days of the date of this Order**, notify water consumers of the failure to sample for nitrite in the second quarter of 2002 for the 2000 - 2002 compliance period.
9. **Within 25 days of the date of this Order**, submit proof of public notice to DES for the failure to sample for nitrite in the second quarter of 2002 for the 2000 - 2002 compliance period.
10. **Within 30 days of the date of this Order**, correct the deficiencies identified in the June 24, 1998 sanitary survey and submit a letter to DES stating what actions were taken to correct the deficiencies.
11. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Linda Magoon
Department of Environmental Services
6 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Voice: (603) 271-0672
Fax: (603) 271-3490
e-mail: lmagoon@des.state.nh.us

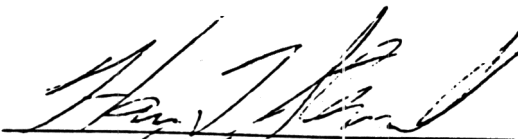
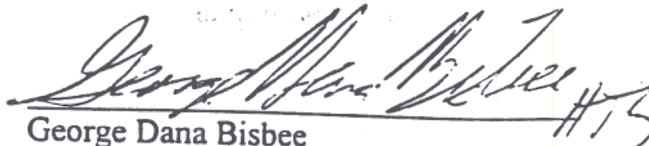
F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Alan Karahalidis and Michael L. Kessel of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485:58 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Alan Karahalidis and Michael L. Kessel remain obligated to comply with all applicable drinking water statutes and rules. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Belknap County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E. Director
Water Division
George Dana Bisbee
Assistant Commissioner

Certified Mail RRR 7099 3400 0003 0692 2280

cc: Gretchen Rule, DES Legal Unit
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Assistant Attorney General
Belknap County Registry of Deeds
Board of Selectmen, Town of Tilton
US EPA, Region I
Richard O'Connell, South Bay Resort

h: wseb-enfmon-enforce-adorder-2357070.doc